

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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EDWARD WINCHELL,

Case #0081012980

Charging Party,

ORDER

-v-

BURLINGTON NORTHERN SANTE FE  
RAILWAY COMPANY,

Respondent.

Edward Winchell (Winchell) filed a complaint with the Department of Labor and Industry (Department) alleging that Burlington Northern Sante Fe Railway Company (BNSF) discriminated against him on the basis of his race, Native American, by deciding to urine test and formally investigate him for an accident that he was involved in, even though coworkers who are Caucasian were not formally investigated for similar or more serious accidents. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Winchell's allegations of unlawful discrimination. The Department issued a Notice of Dismissal. Winchell filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on January 26, 2009.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Section 49-2-511(2), MCA*. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is not an abuse of discretion.

If a charging party chooses to commence a civil action in district court, the charging party has 90 days after the date this order is issued to petition a district court, in the district where the alleged violation occurred, for the appropriate relief. *Section 49-*

2-511(3)(a), MCA. If a charging party fails to commence a civil action within 90 days, the claim is time barred. *Id.*

Alternatively, a party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Section 49-2-511(3)(b), MCA; Mont. Code Ann. § 2-4-702.* This review must be requested within 30 days after the date this order is issued.

IT IS HEREBY ORDERED, that Edward Winchell's objections are **overruled**. The Commission affirms the determination of the Human Rights Bureau to dismiss the complaint against Burlington Northern Sante Fe Railway Company.

DATED this \_\_\_\_ day of February, 2009.

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Chair Ryan C. Rusche  
Human Rights Commission

## CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this \_\_\_\_\_ day of February, 2009.

EDWARD WINCHELL JR  
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Montana Human Rights Bureau